

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. Joshua D. Lamb)	
2. Matthew C. Lay)	
3. Eric D. Acosta)	
4. Zachary G. Allphin)	
5. Norita M. Bridges)	
6. Craig C. Deerinwater)	
7. Tim B. Downie)	
8. Jeffery A. Harper)	
9. Heather D. Perkey)	
10. Ronald Stewart)	Civil Action No. 4:22-cv-00055-TCK-SH
11. Darren L. Thames)	
12. Michael D. Ward)	JURY TRIAL DEMANDED
13. Nicholas L. Wilson)	
14. Steven Wayne Abernathy)	
15. Ryan Wayne Acree)	
16. Jeremy Phillip Agee)	
17. Brett Tyler Allen)	
18. Deon Ladell Anderson)	
19. Dyce R. Applegate)	
20. Jose Manuel Ariza)	
21. Jordan Taylor Ashlock)	
22. Joshua Duke Atterberry)	
23. Phillip Clark Austin)	
24. Mark Anthony Avila)	
25. Donnie Clayton Back)	
26. Drew Aaron Bailey)	
27. Evan James Ross Baker)	
28. Trent Jordan Baker)	
29. Christopher Alan Baldwin)	
30. Istvan A. Balogh)	
31. James Kane Barnes)	
32. Travis M. Barnes)	
33. Jordan Lynn Barnett)	
34. Dustin Tyler Bartling)	
35. Bryan Emmett Beall)	
36. David Neal Beals)	
37. Raymond Lee Beard)	
38. Keith Wayne Beck)	
39. Ryan Lee Beeler)	
40. Jared Lee Belk)	
41. Matthew Wayne Bell)	
42. Chad Dylan Bentley)	
43. Dicus Benton)	

44. Daniel Dean Best)
45. Gary Don Billups)
46. Trey Zeuschlar Blankenship)
47. Jordan Glen Blount)
48. Bryan Chase Bohbrink)
49. Alexa Chanel Booth)
50. Anthonie Michael Bounds)
51. Barret Lee Bowman)
52. Brody Lee Bowman)
53. Andrew James Boyd)
54. Nolan Russell Boyd)
55. Trent Matthew Brennen)
56. Stacey Alan Briggs)
57. Dylan Lee Broadland)
58. Jayme Dawn Brooks)
59. Kyle Matthew Brooks)
60. Redell Levon Brown)
61. David E. Brown, Jr.)
62. Stephen Patrick Bryan)
63. Jayme Don Buck)
64. John Marshall Buck)
65. Gary Richard Bullock)
66. Tiji Ezell Burch)
67. Blake Edwin Burd)
68. Garnett Burkhalter III)
69. Traer Dean Burnett)
70. Justin Michael Buthod)
71. Justin Lee Caldwell)
72. Jerry Lynn Camp)
73. Paul Charles Campanell)
74. Todd Alex Canady)
75. Arthur James Candler)
76. Joseph Leo Carollo)
77. Aaron Matthew Cash)
78. Stephen Allen Cassity)
79. Anthony Royal Castorena)
80. Nicholas John Cates)
81. Elvert Jamar Celestine)
82. Michael Adam Chandler)
83. Robert Dale Chorette)
84. Nathan Aaron Christie)
85. Shawn William Dean Clark)
86. Walter Clark IV)
87. Dalton Tyler Clifton)
88. Craig Alan Coats)
89. Brett Delane Cockrum)

90. Conrad Lee Collison)
91. James Brandon Connors)
92. Justin Ryan Cook)
93. Ryan Edward Creek)
94. Jared Rae Crowder)
95. Jeremiah Michael Daniels)
96. Steven Eugene Daniels)
97. Kellen Ray Davis)
98. Eric Michael DeLay)
99. Butch Joseph Dellis)
100. Kevin Andrew Dickerson)
101. Matthew John Dickerson)
102. Tanner Anthony DiMarco)
103. Derek Berton Dixon)
104. Jason W. Dobson)
105. Marty Dale Dukes)
106. Michael Wayne Dumond)
107. Annalee Dunaway)
108. Dallas Justin Duncan)
109. Katrina Lee Duncan)
110. Raymond Anthony Duran)
111. Travis McClain Eason)
112. Kyle Ray Eller)
113. Grant David Ellingson)
114. Justin Lee Ellington)
115. Robert Bryan Ellis II)
116. Justin Mickeal Embrey)
117. Aubrey Carl Emerson)
118. Bill R. Esmeyer)
119. Clyntnn Leeion Esmeyer)
120. Daulton Wiel Esmeyer)
121. Joshua Leon Evans)
122. Scott Andrew Felkins)
123. Christopher Sterling Field)
124. Brian Scott Fields)
125. Justin Lee Flake)
126. Donald William Flatt)
127. Dustin Larry Fletcher)
128. Chad Franklin Foster)
129. Taylor Joseph Foster)
130. James Dayton Foxworth)
131. Troy D. Franklin Sr.)
132. Erick Kenneth Franzen)
133. Chisom Wayne Frazier)
134. Matthew Wayne Frederickson)
135. Curtis Franklin Freeman)

136. Chris E. Fremen)
137. Jeffery Alan Fry)
138. Travis Keith Fry)
139. James Edward Fuller)
140. Lyle Curtis Fulton)
141. Douglas Christopher Funston)
142. Dylan Javier Garcia)
143. Ryan P. Garrett)
144. Joshua Gibson Gibson)
145. Eric Mitchell Giddings)
146. Nick James Gillespie)
147. Thomas Shane Gillespie)
148. Tony Desmond Gillespie)
149. Cody James Gilmore)
150. Wesley Cameron Goff)
151. Aaron Heath Goins)
152. Bryan Scott Goins)
153. Charles Duane Golden)
154. Kent Johnson Gooch Jr.)
155. Angelisa Fawn Goodrich)
156. Leland David Gray)
157. Stephen Albert Green)
158. Tanner Duane Gregory)
159. Kayle Mitchell Greiman)
160. John Randall Griffin)
161. Victor Marcel Grimes)
162. Stephen Earl Groden)
163. Josh D. Gruenwald)
164. Kevin Shone Guess)
165. Kenneth LaRon Gunn)
166. Justin Blu Haddock)
167. Tim Lee Halowell)
168. Zachary Ben Hamby)
169. Lyle Nolan Hammock)
170. Dewayne Darrell Harp)
171. Scott Tyler Harper)
172. Etta Ann Harsen)
173. Teddy Jackson Allen Harwood)
174. Matthew Alexander Heath)
175. David Smith Heffernan)
176. Jarred Raymond Henderson)
177. Angel D. Hernandez)
178. Colt Tyrel Herren)
179. Bennie Jay Herring)
180. Darren Keith Hickson)
181. Timothy Allen Higeons)

182. Danny Tim Hite)
183. Mark Carson Hodges)
184. Turner Evan Hodges)
185. Shawn L. Holland)
186. Blake Daniel Hollingsworth)
187. Lorenzer Holmes)
188. Keith A. Horn)
189. Kevin Eugene Horner)
190. Travis Martin Howard)
191. Thomas Adam Hufford)
192. Michael Edward Hughes)
193. Jacob Gordon Inbody)
194. Timothy James Ingram)
195. Steven Ray Isaacs)
196. Adam Thomas Joseph)
197. Jeremy Tomson Jurena)
198. Danny Wayne Kaiser)
199. Korey Thomas Kaiser)
200. Chad Ryan Karn)
201. Kevin Ray Keck)
202. Kyle H. Keith)
203. Stephen N. Kendrick)
204. Trevor Lee Kennedy)
205. Robert Bradley Kerr)
206. Robert Kevin Kerr)
207. Bradley James King)
208. James Cody Knight)
209. Michael Adam Krebs)
210. James Edward Kremers)
211. Timothy Thomas Kuehnert)
212. Christopher Dwayne Kuykendall)
213. Jacob Tanner Lamb)
214. Nicholas Jedediah Lancaster)
215. Jeremy Joseph-Merrill Land)
216. Nolan Ray Lane)
217. Jason Bert Large)
218. Mark Alan Laskey)
219. Jay Delain LaValley)
220. Phillip Dean Lee)
221. Jeffrey Alan Leon)
222. Ty Daley Lewis)
223. Wesley Jordan Lightle)
224. Joe Don Littlefield)
225. James L. Long)
226. Jeffrey Allen Long)
227. Simon Adam Lopez)

228. Julie Lynn Lynn)
229. Charles Edward 1 Mangold)
230. Kevin Wayne Mann)
231. Clayton D. Marrs)
232. Joseph William Marshall)
233. Chad Weston Martin)
234. Chase Joel Martin)
235. Darrell Chad Martin)
236. James Brice Martin)
237. Keith W. Martin)
238. Tyler Wade Martin)
239. Vance Gordon Massey, Jr.)
240. Tracy Dean McAlister)
241. Michael Gene McClendon)
242. Logan Keith McCormick)
243. Gregory Wallace McCourt)
244. Glenn Craig McCoy)
245. Richard Warren McCreary)
246. Jacob Ray McDaniel)
247. Robert M. McKnight)
248. Xavier V. McNac)
249. Devin Orval McNown)
250. Nicholas Jonathan McQuay)
251. Greg Scott Meadows)
252. David James Merrill)
253. Jacob Wayne Meyer)
254. Dana R. Miller)
255. Ronnie Donnell Miller)
256. Blake Rutledge Mitchell)
257. Abraham Rivera Montes)
258. Justin Levi Montgomery)
259. Derick Clifford Moore)
260. Daniel Jason Morgan)
261. John E. Morgan)
262. Trenton Earl Morris)
263. Jade Allynne Morrison)
264. Nathan David Morrison)
265. Jonathan A. Morton)
266. Hayden Aaron Moseby)
267. Jim Aaron Moseby)
268. Sean Blake Moser)
269. Kelly L. Mull)
270. Rodney Allen Mullinax)
271. Galen Lee Murphy)
272. Dan Joseph Newbury)
273. Mickey Joel Nichol)

274. Burl Nathaniel Nicholson)
275. Jim Ed Nimmo)
276. Houston Alexander Nole)
277. Jimmy L. Ober)
278. John Leonard Ober)
279. Joshua Glen O'Dell)
280. Patrick Wade O'Dell)
281. James Paul O'Neal)
282. Jonathan Gregory Orange)
283. Fredrick LaMar Owens)
284. Robert Keith Page II)
285. Michael Quincy Parham)
286. Cole Grant Park)
287. Coleman Robert Parsons)
288. Roy Robert Parsons)
289. Lyle Dee Payne)
290. Richard Lawrence Peaster II)
291. Matthew Eugene Penderson)
292. Daniel Scott Phelps)
293. Ashton Daniel Phillips)
294. Jeremy Lockwood Phillips)
295. Jonathan Ross Pierce)
296. Danny Lee Pitts)
297. Michael David Pitts)
298. Stephen Matthew Pitts)
299. Brandon Scott Potter)
300. Justin Warren Potts)
301. Brien Scott Pritchard)
302. Kody Austyn Rackers)
303. Robbie Elbert Ralston)
304. Brandon Eugene Record)
305. Robert E. Redricks)
306. Caleb Levi Reed)
307. Jon Christopher Reeves)
308. Michael John Regenhard)
309. Samuel Francis Remmert)
310. William Ryan Remmert)
311. Rasheem Rone Revels)
312. Cade Nicholas Reyerson)
313. David Daniel Rice)
314. Samuel Louis Richards)
315. Jake Benton Richison)
316. Alec John Ridener)
317. Nicholas Steven Ridener)
318. Ryan Anthony Rider)
319. Makayla Alice Ring)

320. James Brett Roach)
321. Jared Michael Roach)
322. Brett Alan Roberts)
323. Ryan Glynn Roberts)
324. Courtney W. Robinson)
325. Timothy McAlister Robinson)
326. David Hale Rollandini)
327. Joshua Ray Rollins)
328. Michael Paul Rouse)
329. Mike C. Rudick)
330. Mike Darren Rusher)
331. Camilo Andrez Sanchez)
332. Chad David Savill)
333. Johnnie Dwayne Sawyer Jr.)
334. Roger W. Schafer)
335. Gerald Jermaine Scott)
336. Robert Dale Scott)
337. Adrienne Michelle Seibel)
338. Micah Jay Seibel)
339. Justin Dickson Selby)
340. Matthew William Shannon)
341. Stephen Michael Shaw)
342. Matt Shawn Shearer)
343. Travis Adam Sheeder)
344. Joseph Ryan Shepard)
345. Joseph Nile Sherrell)
346. Logan Alexander Shultz)
347. Michael Jon Siler)
348. Brett Alle Sinkbeil)
349. Cash T. Sivadon)
350. John Tyler Skidgel)
351. James Kyler Skinner)
352. Russell Wayne Slater)
353. Jason Scott Smart)
354. Andrew Richard Smith)
355. Bradley Todd Smith)
356. Brandon Kyle Smith)
357. Herschel Benee Smith)
358. Jacky Wayne Smith)
359. James Douglas Smith)
360. Randall Wayne Spyres)
361. Ryan Jeffrey Spyres)
362. Travis Cody Stallings)
363. Richard Dale Stammer)
364. Zack Jeremiah Stamper)
365. James Phillip Stanfield)

366. Jon A. Steiner)
367. Austin Middle Stevens)
368. James Patrick Steward)
369. Jacob Cole Stewart)
370. Matt Todd Stewart)
371. Robert Todd Stewart)
372. Gary Joseph Stika)
373. John Robert Stika)
374. Scotty Ray Stokes)
375. Vincent Ray Stoops)
376. Michael Paul Stout)
377. James Dean Sumner)
378. Bobby Don Sumpter)
379. Thomas Lee Sunny)
380. George Alex Surrell)
381. Nickolas B. Swainston)
382. Gerry DeJuan Tarver)
383. Gerry Wayne Tarver)
384. Scott Allan Tarwater)
385. Johnny Ray Tate)
386. Richard Lee Tattershall)
387. Matthew James Tavaglione)
388. Allen Russell Taylor)
389. Joshua Calvin Teague)
390. Blake Lane Teel)
391. Jenifer Ann Teeter)
392. David Matthew Thomas)
393. Shelby Lynn Thompson)
394. Timothy Ryan Thompson)
395. Ken Brodie Thornburg)
396. Benjamin Nicholas Thulin)
397. Jon D. Trumbly)
398. Heath William Tye)
399. Chase Patrick Tyler)
400. Cory Shay Vanarsdel)
401. Colby James Vanbuskirk)
402. Colt Tyler Vandolah)
403. Sean D. Vanwagner)
404. Ryan Daniel Walker)
405. Kofi Jamal Wallace)
406. Colin Montgomery Ward)
407. James Dewayne Warner)
408. David Wayne Weaver)
409. Yahola Bruner Webb)
410. Justin Allen Weber)
411. Matthew Douglas Weeks)

412. Christopher Shawn Weisberg)
413. Jacob Regg Wenaas)
414. Justin Scott Whinery)
415. Justin David White)
416. Howard Christian Whitehill)
417. Christopher Lowry Whittington)
418. Heath F. Willcox)
419. Jeff Franklin Willcox)
420. Kendall Jean Williams)
421. Lane Allen Williams)
422. Richard Allen Williams)
423. Jacob Keith Wilson)
424. James M. Wilson)
425. Ronny David Wilson)
426. Dustin David Wolfe)
427. Zachary Glen Wood)
428. Jimmy Joe Worley)
429. Colby James Wright)
430. Jackie Dean Wright)
431. Mark Douglas Wright)
432. Delano Yarbrough)
433. James Dale Yoder)
434. Dillon Glenn Patrick Youngblood)
435. Joshua Delbert Zweifel)
)
Plaintiffs,)
)
v.)
)
1. CITY OF TULSA, OKLAHOMA;)
2. GEORGE THERON BYNUM, sued)
in his official capacity as Mayor of)
the City of Tulsa, Oklahoma; and)
3. JACK BLAIR, sued in his official)
capacity as Chief Operations Officer)
of the City of Tulsa, Oklahoma;)
)
Defendants.)

FIRST AMENDED COMPLAINT

INTRODUCTION

Plaintiffs, by and through their counsel, respectfully submit their First Amended Complaint¹ against the City of Tulsa, Oklahoma, George Theron Bynum, in his official capacity as Mayor of the City of Tulsa, Oklahoma, and Jack Blair, in his official capacity as Chief Operations Officer of the City of Tulsa, Oklahoma, and state as follows:

PARTIES

1. Plaintiffs Joshua D. Lamb (who is the Secretary Treasurer of the labor organization representing the fire fighters of the City of Tulsa, International Association of Fire Fighters, AFL-CIO, CLC, Local 176 (“IAFF Local 176”)), Matthew C. Lay (President of IAFF Local 176), Eric D. Acosta, Zachary G. Allphin, Norita M. Bridges, Craig C. Deerinwater, Tim B. Downie, Jeffrey A. Harper, Heather D. Perkey, Ronald Stewart, Darren L. Thames, Michael D. Ward, and Nicholas L. Wilson, as well as those additional plaintiffs listed in the caption above, (collectively, “Plaintiffs”),² are current and former employees of the City of Tulsa, Oklahoma, (“Defendant” or “City”), who bring this action under the Fair Labor Standards Act (“FLSA”) against Defendants, on behalf of themselves and other similarly situated employees, because of Defendants’ unlawful

¹ This First Amended Complaint is filed pursuant to Rule 15(a)(1)(B) of the Rules of Civil Procedure, which provides that a party may amend its pleading once as a matter of course within 21 days after service of a responsive pleading. This is Plaintiffs’ first amended pleading, and it is filed within 21 days of Defendants’ Answer (Dkt. 18), which was filed March 2, 2022.

² The Original Complaint, filed February 1, 2022, named 13 plaintiffs. (Dkt. 2). Subsequently, an additional 385 plaintiffs joined by filing consent-to-sue forms with the Court. (Dkt. 12.1, 14.1, 15.1, 19.1, 20.1, 22.1, 23.1, 24.1). With the filing of this First Amended Complaint, an additional 37 plaintiffs have joined this action, bringing the total to 435. For reference, the names of the 37 plaintiffs added with this filing appear in bold in the caption above, and written forms indicating consent-to-sue pursuant to 29 U.S.C. § 216(b) for all 435 plaintiffs have been attached hereto as **Exhibit A**.

deprivation of Plaintiffs' rights to overtime compensation. Plaintiffs are similarly situated because they have been subject to the same policies and/or practices, described below, whereby the City willfully failed to fully and timely compensate Plaintiffs at the lawful overtime rate for all overtime work, as required by the FLSA.

2. Defendant City of Tulsa, Oklahoma, operates the Tulsa Fire Department, which is the department responsible for fire and emergency response for the City of Tulsa and its residents.

3. Defendant George Theron Bynum, sued in his official capacity as Mayor of the City of Tulsa, is a City official responsible for lawfully exercising the executive and administrative powers of the City, including, among other things, ensuring that the City does not unlawfully take the benefits of its hardworking public safety employees' labor without providing full compensation for that labor consistent with federal law.

4. Defendant Jack Blair, sued in his official capacity as Chief Operating Officer of the City of Tulsa, is also a City official responsible for, among other things, ensuring that the City does not unlawfully take the benefits of its hardworking public safety employees' labor without providing compensation for that labor consistent with federal law

5. At all times material herein, Defendants have employed the Plaintiffs in the positions of Firefighter, Lieutenant, and/or Captain in the Tulsa Fire Department. The exact dates of the Plaintiffs' employment are in the custody and control of the Defendants, and the Defendants know specifically what dates each of the Plaintiffs has worked in each position.

6. The Plaintiffs bring this action for backpay compensation, liquidated damages, attorneys' fees and costs, and other relief available under the FLSA, as amended, 29 U.S.C. § 201, *et seq.*

7. The Plaintiffs who are identified in the caption of this First Amended Complaint have given their written consent to be party Plaintiffs in this action, pursuant to 29 U.S.C. § 216(b). Such written consents are attached hereto as Exhibit A.

8. At all times material herein, all Plaintiffs have been “employees” within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

9. Defendant City of Tulsa is a municipal corporation under the laws of the State of Oklahoma, with the power to sue and be sued in its own name. Defendants Bynum and Blair are public officials of the City of Tulsa and sued in their official capacities as officials of the City of Tulsa. At all times material herein, Defendant City of Tulsa has been a “public agency” and “employer” within the meaning of the FLSA, 29 U.S.C. § 203(x), 203(d). Defendant has a principal office and place of business located within the United States District Court for the Northern District of Oklahoma, at the Tulsa City Hall, located at 175 E. 2nd Street, in Tulsa, Oklahoma 74103.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over Plaintiffs’ FLSA action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

11. A substantial part of the events giving rise to Plaintiffs’ claims occurred in this District, as the unpaid wages sought in this action were earned in this District. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FACTS

12. Plaintiffs have worked for Defendants in the positions of Firefighter, Lieutenant, and/or Captain at the Tulsa Fire Department from January 28, 2019, through the present, as well as before.

13. Defendants have adopted a 27-day “work period” for the City’s fire protection employees, pursuant to 29 U.S.C. § 207(k). As a result, the applicable overtime threshold for Plaintiffs is 204 hours in each 27-day work period. 29 C.F.R. § 553.230.

14. During the relevant time period, Plaintiffs have been assigned to work and did in fact work a regular, repeating schedule of 24-hour shifts—from 8 a.m. to 8 a.m. the following day—followed by 48 hours off. This shift schedule is referred to as a “24/48.”

15. In the Tulsa Fire Department, each fire suppression employee, including the Plaintiffs, is given one shift off duty for every 14 regularly scheduled shifts. The off-duty shift is referred to as an “Hours Reduction Shift” or “HRS.”

16. As a result of their 24/48 shift schedule and recurring HRS days, Plaintiffs are regularly scheduled to work an alternating pattern of 216 hours in one 27-day work period followed by 192 hours in the next 27-day work period; this schedule repeats. As such, Plaintiffs are regularly scheduled to and do in fact work beyond the 204-hour overtime threshold pursuant to 29 U.S.C. 207(k).

17. While on shift, Plaintiffs perform their regular, primary job duty of performing emergency response work, including but not limited to responding to calls for emergency assistance, operating emergency apparatuses, advancing hose-line to burning buildings, extinguishing fires, and providing emergency medical assistance as needed.

18. Plaintiffs are paid a fixed salary every two weeks on their biweekly payday to compensate them for their regularly scheduled hours. Prior to April 2021, Plaintiffs received either “OT FLSA .5” or “OT FLSA 1.5” pay for their regularly scheduled overtime work that exceeded the applicable FLSA threshold.

19. However, in or about April 2021, Defendants ceased paying Plaintiffs FLSA overtime for their regularly scheduled overtime work. As a result, Defendants have failed to pay Plaintiffs one and one-half times their regular rate of pay for their regularly scheduled overtime work, as required by the FLSA.

20. At all times material herein, Defendants have known and should have known that uncompensated overtime work was being performed by Plaintiffs. For example, Defendants track Plaintiffs' regularly scheduled shifts, including overtime hours, and any additional overtime shifts that are picked up or worked by the Plaintiffs. Defendants also administer Plaintiffs' biweekly paychecks and thus knows Plaintiffs have not received FLSA overtime payments for their regularly scheduled overtime work since at least April 2021.

21. In addition to their regularly scheduled shifts, Plaintiffs also frequently pick up overtime shifts when stations are short on staffing or overtime work is otherwise needed. To be paid for overtime shifts that are not part of their regular shift schedule, Defendants require Plaintiffs to submit a written overtime slip to their supervisors. The overtime request is then passed up to the Assistant Chief level and then transmitted to payroll, where it is supposed to be processed and paid.

22. Without explanation or justification, Defendants have frequently failed to issue payment in a timely manner after Plaintiffs submit their overtime slips for payment. At times material from January 28, 2019, and through the present and ongoing, Defendants have unreasonably delayed such overtime payment for periods of weeks or months beyond Plaintiffs' regularly scheduled biweekly payday. For example, Plaintiff Lamb performed unscheduled overtime work beyond the applicable FLSA threshold on November 28, 2021, and December 11, 2021, in the pay period ending December 11, 2021. Plaintiff Lamb timely submitted an overtime

payment request pursuant to Department policy, but payment for such overtime work has been delayed unreasonably by more than 38 days.

23. The exact scheduled overtime hours worked by Plaintiffs and the exact workweeks in which Plaintiffs worked over the FLSA statutory maximum number of hours as part of their scheduled work hours can easily be determined by looking at the Plaintiffs' timekeeping and payroll records, which are in the possession, custody, and control of Defendants.

24. Defendants' actions in refusing to provide Plaintiffs the rights and protections provided under the FLSA are willful in that Defendants knew the City's pay practices were prohibited by the FLSA or, at the very least, showed a reckless disregard for the FLSA. For example, Defendants knowingly accepted the benefit of Plaintiffs' regularly scheduled and unscheduled overtime work from at least April 2021 without compensating Plaintiffs at the lawful overtime rate. Moreover, Defendants have failed to ensure that Plaintiffs are timely compensated for unscheduled overtime work for years, even after employees complain about the lack of timely payments.

COUNT I

Violation of Sections 7(a), (k) of the Fair Labor Standards Act, 29 U.S.C. §§ 207(a), (k)

25. Plaintiffs re-allege, and incorporate by reference herein, Paragraphs 1 through 24 of this Complaint.

26. Defendants have suffered or permitted Plaintiffs and other similarly situated employees to work in excess of the hourly standards set forth under 29 U.S.C. § 207(k). During the times that Plaintiffs have worked in excess of 204 hours in a 27-day work period, Defendants have failed to provide Plaintiffs with overtime pay at the rate of one and one-half times their regular rates of pay for all overtime hours.

27. By failing to pay the Plaintiffs and other employees similarly situated the overtime pay required under the law, the Defendants have violated and are continuing to violate the provisions of the FLSA in a manner that is unreasonable, willful, and in bad faith. As a result, at all times material herein, the Plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum period allowed under the law.

28. As a result of the Defendants' willful and bad faith violations of the FLSA, there have become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of the Defendants, and the Plaintiffs are unable to state at this time the exact amount owing to them. Defendants are under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the Plaintiffs and other employees similarly situated from which the amount of Defendants' liability can be ascertained.

29. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay for Defendants' failure to pay overtime compensation.

30. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

COUNT II

Failure to Pay FLSA Overtime in a Timely Manner by Paying Weeks or Months After the Overtime was Worked

31. Plaintiffs re-allege, and incorporate by reference herein, Paragraphs 1 through 30 of this Complaint.

32. The FLSA mandates that overtime compensation be paid on the regular payday for the period in which such workweek ends. Overtime payments under the FLSA may not be delayed except as reasonably necessary to compute the amount owned, and in no event shall such payments

be delayed beyond the next payday after such computation can be made. 29 C.F.R. § 778.106. Defendants have violated these basic principles by delaying Plaintiffs' overtime payments for working in excess of 204 hours a work period by weeks and in some cases months, with such delay not being reasonably necessary to compute Plaintiffs' overtime pay, but rather because of a failure by management personnel to approve overtime payments or otherwise unreasonably fail to effectuate timely payment.

33. Defendants' failure to pay Plaintiffs FLSA overtime pay in a timely manner and their withholding of such overtime payments violates section 7(a) of the FLSA. 29 U.S.C. §§ 207(a), (k); 29 C.F.R. § 778.106; *see also Seneca Coal & Coke Co. v. Lofton*, 136 F.2d 359, 363 (10th Cir. 1943), *cert. denied*, 320 U.S. 772 (1943) (affirming award of liquidated damages for late payment of overtime because it was "not paid when due in the regular course of employment," in violation of the FLSA).

34. As a result of the Defendants' willful and bad faith violations of the FLSA, there have become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of the Defendants, and the Plaintiffs are unable to state at this time the exact amount owing to them. Defendants are under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the Plaintiffs and other employees similarly situated from which the amount of Defendants' liability can be ascertained.

35. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay for Defendants' failure to pay overtime compensation.

36. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and applicable law, all Plaintiffs hereby demand that their claims be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

- (a) Enter judgment finding that the Defendants have willfully and wrongfully violated their statutory obligations under federal law and deprived each of the Plaintiffs of his/her rights;
- (b) Order a complete and accurate accounting of all the unpaid compensation to which the Plaintiffs are entitled;
- (c) Award Plaintiffs compensatory relief in the form of unpaid compensation and liquidated damages equal to their unpaid compensation;
- (d) Award Plaintiffs interest on their unpaid compensation;
- (e) Award Plaintiffs their reasonable attorneys' fees to be paid by the Defendants, and the costs associated with bringing this action; and
- (f) Grant such other relief as may be just and proper.

DATE: March 23, 2022

Respectfully submitted,

/s/ Sara L. Faulman

Sara L. Faulman (admitted pro hac vice)
John W. Stewart (admitted pro hac vice)
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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2022, I transmitted the foregoing filing and accompanying documents, to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel of record.

/s/ Sara L. Faulman

Sara L. Faulman